TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1896.

No. 408.

S. H. H. CLARK, OLIVER W. MINK, E. ELLERY ANDERSON, J. W. DOANE, AND F. R. COUDERT, RECEIVERS OF THE UNION PACIFIC RAILWAY COMPANY, PLAINTIFFS IN ERROR,

vs.

THE CITY OF KANSAS CITY, KANSAS, ET AL.

IN ERROR TO THE SUPREME COURT OF THE STATE OF KANSAS.

FILED SEPTEMBER 18, 1896.

(16,987.)

(16,987.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1898.

No. 402.

S. H. H. CLARK, OLIVER W. MINK, E. ELLERY ANDERSON, J. W. DOANE, AND F. R. COUDERT, RECEIVERS OF THE UNION PACIFIC RAILWAY COMPANY, PLAINTIFFS IN ERROR,

vs.

THE CITY OF KANSAS CITY, KANSAS, ET AL.

IN ERROR TO THE SUPREME COURT OF THE STATE OF KANSAS.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., NOVEMBER 3, 1898.

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1 In the Supreme Court of the State of Kansas.

Be it remembered that on the 5th day of March, 1896, there was filed in the office of the clerk of the supreme court of the State of Kansas a petition in error, with a case-made of the proceedings of the district court attached thereto and made a part thereof, and a precipe for summons in error against S. H. H. Clark *et al.*, receivers of the Union Pacific Railway Company, defendants in error, which are in words and figures as follows, to wit:

2 In the Supreme Court of the State of Kansas.

THE CITY OF KANSAS CITY, KANSAS; THE BOARD OF EDUCATION of the City of Kansas City, Kansas; The Township of Wyandotte, of Wyandotte County, Kansas; School District No. 9, Wyandotte County, Kansas; Benjamin Schnerlie, as County Treasurer of Wyandotte County, Kansas; Leonard C. Daniels, as Successor in Office of Charles E. Bruce and as County Clerk of Wyandotte County, Kansas, Plaintiffs in Error,

vs.

S. H. H. CLARK, OLIVER W. MINK, E. ELLERY ANDERSON, J. W. Doane, and F. R. Coudert, as Receivers of the Union Pacific Railway Company, Defendants in Error.

Petition in Error.

The said City of Kansas City, Kansas; The Board of Education of the City of Kansas City, Kansas; The Township of Wyandotte, of Wyandotte county, Kansas, and School District No. 9 of Wyandotte County, Kansas, plaintiffs in error above named, are each and all municipal corporations duly organized, existing, and acting as such under the laws of the State of Kansas.

That the plaintiff in error Benjamin Schnerlie, as county treasurer of Wyandotte county, Kansas, is and was at all times herein mentioned county treasurer of said Wyandotte county.

That Leonard C. Daniels, plaintiff in error above named, is now the regularly elected, qualified, and acting county clerk of Wyandotte county, Kansas, and is the successor in office of Charles E. Bruce, in this petition hereinafter mentioned.

That the defendants S. H. H. Clark, Oliver W. Mink, E. Ellery Anderson, J. W. Doane, and F. R. Coudert are now the regularly appointed and acting and qualified receivers of the Union Pacific Railway Company, a railway corporation organized, existing, and doing business as such under the laws of the United States.

The plaintiffs in error in the above-entitled action complain of the defendants in error in above action for that the said defendants in error above named, as receivers of the Union Pacific Railway Company, at the May term, 1895, of the court of common pleas of Wyandotte county, State of Kansas, recovered a judgment
3 by the consideration of said court against the City of Kansas City, Kansas; The Board of Education of the City of Kansas

City, Kansas; The Township of Wyandotte, of Wyandotte county, Kansas; School District Number Nine (9) of Wyandotte County, Kansas; Benjamin Schnerlie, as county treasurer of Wyandotte county, Kansas, and Charles E. Bruce, as county clerk of Wyandotte county, Kansas, and against the successors in office of said Charles E. Bruce and said Benjamin Schnerlie in a certain action pending in said court, wherein the said defendants in error, as receivers of the said Union Pacific Railway Company, were plaintiffs and the said City of Kansas City, Kansas; The Board of Education of the City of Kansas City, Kansas; The Township of Wyandotte, of Wyandotte county, Kansas; School District Number Nine (9) of Wyandotte county, Kansas; Benjamin Schnerlie, as county treasurer of Wyandotte county, Kansas; Charles E. Bruce, as county clerk of Wyandotte county, Kansas, were defendants.

That a full, complete, true, correct, and certified transcript of the record of said court of common pleas in said action is hereto attached, marked "Exhibit A," and made a part of this petition in error, and the said plaintiffs in error herein aver that there is error in said record and proceedings in this, to wit:

1st. That said court of common pleas erred in its finding, decision, and judgment that chapter 74 of the Session Laws of Kansas for the Year of 1891, entitled "An act relating to cities of the first class, and adding thereto certain adjoining territory," is unconstitutional, null, and void.

2nd. That said court erred in overruling plaintiffs' demurrer to the defendants' petition in said actions.

3rd. That said court erred in not rendering judgment for the plaintiffs in error and by rendering judgment for the defendants in error on the pleadings in said action.

Wherefore the plaintiffs in error above named pray that said judgment so rendered shall be reversed, set aside, and held
4 for naught, and that a judgment may be ordered to be rendered in favor of the plaintiffs in error and against the defendants in error, and that the plaintiffs in error be restored to all rights lost by the rendition of such judgment, and for such further relief as — the court may seem just.

K. P. SNYDER,
City Counselor of Kansas City, Kansas,
T. A. POLLOCK,
City Attorney of Kansas City, Kansas,
S. C. MILLER,
County Attorney of Wyandotte County, Kansas,
Attorneys for the Plaintiffs in Error.

Filed Mar. 5th, 1896.

C. J. BROWN,
Clerk Sup. Court.

To C. J. Brown, clerk of supreme court of the State of Kansas:

You will please issue summons in error in the above-entitled case for defendants in error, S. H. H. Clark, Oliver W. Mink, E. Ellery

Anderson, J. W. Doane, and F. R. Coudert, as receiver of the Union Pacific Railway Company, and their attorneys of record, A. L. Williams, N. H. Loomis, and R. W. Blair, to sheriff of Shawnee county, Kansas, returnable according to law.

March 5th, 1896.

K. P. SNYDER,
Attorney for Plaintiffs in Error.

(Endorsed:) 10571. City of Kansas City *et al.*, plaintiffs in error, *vs.* S. H. H. Clark *et al.*, as receivers of the Union Pacific Railway Company, defendants in error. Petition in error & transcript. K. P. Snyder, T. A. Pollock, S. C. Miller. Filed Mar. 5, 1896. C. J. Brown, clerk supreme court.

5 10571.

In the Court of Common Pleas of Wyandotte County, Kansas.

S. H. H. CLARK, OLIVER W. MINK, E. ELLERY ANDERSON, J. W. DOANE, and F. R. COUDERT, as Receivers of the Union Pacific Railway Company, Plaintiffs,

vs.

THE CITY OF KANSAS CITY, KANSAS; THE BOARD OF Education of the City of Kansas City, Kansas; M. G. McLean, as County Treasurer of Wyandotte County, Kansas; Charles E. Bruce, as County Clerk of Wyandotte County, Kansas; The Township of Wyandotte, of Wyandotte County, Kansas, and School District Number Nine of Wyandotte County, Kansas, Defendants. } No. 1647.

Before the Hon. Thomas P. Anderson, judge of said court.

Transcript of Record.

Appearances.—For plaintiffs: A. L. Williams, N. H. Loomis, R. W. Blair. For defendants: K. P. Snyder, T. A. Pollock.

Filed Mar. 5, 1896.

C. J. BROWN,
Clerk Sup. Court.

EXHIBIT "A."

6 In the Court of Common Pleas of Wyandotte County, Kansas.

S. H. H. CLARK, OLIVER W. MINK, E. ELLERY ANDERSON, J. W. Doane, and F. R. Coudert, as Receivers of the Union Pacific Railway Company, Plaintiffs,
vs.
THE CITY OF KANSAS CITY, KANSAS; THE BOARD OF Education of the City of Kansas City, Kansas; M. G. McLean, as County Treasurer of Wyandotte County, Kansas; Charles E. Bruce, as County Clerk of Wyandotte County, Kansas; The Township of Wyandotte, of Wyandotte County, Kansas, and School District Number Nine of Wyandotte County, Kansas, Defendants. } No. 1647.

Before the Hon. Thomas P. Anderson, judge of said court.

Appearances.—For plaintiffs: A. L. Williams, N. H. Loomis, R. W. Blair; for defendants: K. P. Snyder, T. A. Pollock.

Transcript of Record.

EXHIBIT "A."

7 Be it remembered that on the 15th day of December, A. D. 1893, the plaintiffs filed with the clerk of said court their petition herein, a copy of which petition being in words and figures as follows:

S. H. H. CLARK, OLIVER W. MINK, E. ELLERY ANderson, J. W. Doane, and F. R. Coudert, as Receivers of the Union Pacific Railway Company, Plaintiffs,
vs.
THE CITY OF KANSAS CITY, KANSAS; THE BOARD OF Education of the City of Kansas City, Kansas; M. G. McLean, as County Treasurer of Wyandotte County, Kansas; Charles E. Bruce, as County Clerk of Wyandotte County, Kansas; The Township of Wyandotte, of Wyandotte County, Kansas, and School District Number Nine (9) of Wyandotte County, Kansas, Defendants. } No. 1647.

Petition.

The plaintiffs for their cause of action allege that on the 13th day of October, 1893, plaintiffs above named, S. H. H. Clark, Oliver W. Mink, and E. Ellery Anderson, were by the United States circuit court for the district of Nebraska appointed receivers of all of the property of the Union Pacific Railway Company; that afterwards, on the 13th day of October, 1893, they were by the United States circuit court for the district of Kansas appointed ancillary receivers of the

property of the Union Pacific Railway Company and given entire charge, custody, and control of all of the property of said company within the State of Kansas; that afterwards, on the — day of November, 1893, plaintiffs J. W. Doane and F. E. Coudert were by the United States circuit court for the district of Nebraska appointed as additional receivers of all of the property of the Union Pacific Railway Company; that afterwards, on the 27th day of November, 1893, they were by the United States circuit court for the district of Kansas duly appointed as ancillary receivers of the property of said company, and that said plaintiffs above named have since said dates had full charge, custody, and control of all of the property of all kinds and description of the Union Pacific Railway Company, and that under the order of appointment as receivers they are now engaged in operating the railroad of the Union Pacific Railway Company, and that under such order of appointment they are authorized to and it is the duty of plaintiffs to pay all legal taxes against the property of the Union Pacific Railway Company and to institute and prosecute all such suits as may be necessary for the proper protection of the property and trusts vested in them as receivers.

Plaintiffs further allege that said The Union Pacific Railway Company is a corporation duly organized in accordance to law and is the owner of a line of railroad and other property located in Wyandotte county, Kansas.

That the said city of Kansas City, Kansas, is a city of the first class, organized and existing under and by virtue of the laws of the State of Kansas.

Plaintiffs further allege that on the 8th day of March, 1892, the said defendants, The City of Kansas City, by a certain ordinance enacted by it upon that date attempted to include within its boundaries and to bring within its jurisdiction certain unplatted lands lying adjacent thereto and described as follows:

Commencing at the northeast corner of the southeast quarter (¼) of section fifteen (15), township eleven (11), range twenty-five (25) east, in Wyandotte county, Kansas, thence south forty (40) poles; thence east to the Kansas river; thence down the same to the prolongation of the east and west center line of said section fifteen (15); thence west to beginning.

8 Also commencing at the northeast corner of the southeast quarter (¼) of section fifteen (15), township eleven (11), range 25 east, in Wyandotte county, Kansas, thence west to the center line of said section fifteen (15); thence north eighty (80) poles; thence west fifty-four (54) poles; thence south to the southerly line of Fifth street, in the original town site of Armstrong; thence along the southerly line of Fifth street to its intersection with the southerly line of the Muncie boulevard; thence westerly along the southerly line of the Muncie boulevard to the west line of said section fifteen (15); thence south to the southwest corner of the southwest quarter of section fifteen (15); thence east eighty (80) poles; thence north fifty-two (52) poles; thence east eighty-five (85) poles; thence north twenty-eight (28) poles; thence east eight (8) poles; thence north one hundred ninety-nine (199) feet; thence east three hun-

dred fifty-five eight-tenths (355.8) feet to the east line of Third street, in McAlpine's addition; thence north one hundred sixty feet (160 feet); thence east two hundred seventy-five feet (275 feet) to the center line of Second street, in McAlpine's addition, produced; thence north one hundred thirty (130) feet; thence east three hundred fifteen (315) feet to the prolongation of the center line of First street, in McAlpine's addition; thence north one hundred thirty-two feet and eight-tenths feet (132.8); thence east to the east line of said section fifteen (15); thence north forty (40) poles to the beginning.

Also commencing at a point where the northerly line of the Union Pacific Railway Company's right of way intersects the east line of *of* section sixteen (16), township eleven (11), range twenty-five east (25), in Wyandotte county, Kansas, thence northwesterly along said northerly line of the right of way of the Union Pacific railway to the west line of said section sixteen (16); thence south along the west line of said section sixteen (16) about one hundred feet (100) to the southerly line of the right of way of the Union Pacific railway; thence southeasterly along the southerly line of said right of way to the east line of said section sixteen (16); thence north about one hundred (100) feet to beginning.

Plaintiffs further allege that said Union Pacific Railway Company was at that time and now is the owner of the lands intended to be described in said ordinance, with the exception of a small portion thereof, consisting of about eight or ten acres, belonging to the Chicago, Rock Island and Pacific Railroad Company. A copy of the ordinance above referred to is attached to this petition, marked "Exhibit A," and made a part hereof.

Plaintiffs allege that said city of Kansas City passed said ordinance and attempted to take said lands within its limits under and by virtue of the provisions of chapter seventy-four (74) of the Session Laws of Kansas for 1891, being an act entitled "An act relating to certain cities of the first class and the adding thereto certain adjoining territory."

And plaintiffs are advised, and so charge the fact to be, that in so far as said statute attempts to authorize the taking of said lands within the limits of Kansas City, Kansas, as attempted in said ordinance, Exhibit "A," it is unconstitutional, null, and void, in this, to wit:

That by reason of that portion of the act which excepts from its operation any tract or tracts of land used for agricultural purposes, when the same is not owned by any railroad or other corporation, it is in violation of that part of the fourteenth amendment to the Constitution of the United States which reads as follows: "Nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction *of* the equal protection of the law;" and, furthermore, that by reason of said exception *and by reason of said exception* and by reason of the facts set forth in this petition said act is in violation of section one of article twelve and of section seventeen of article two of the constitution of the State of Kansas.

Plaintiffs are further advised, and so charge the fact to be, that

said city of Kansas City was without authority of law to include within its boundaries the land above described, as attempted
9 by it; that the action of said city in so doing was null and void, and that said land is not and never has been within the limits of said city.

Plaintiffs further allege upon information and belief that there was not, at the time of the passage of said chapter seventy-four (74) of the Session Laws of Kansas for 1891, any city of thirty thousand inhabitants or more in the State of Kansas where the conditions referred to in the first part of said act, permitting the adding of additional territory to a city by the passage of an ordinance merely, exist; and plaintiffs are advised, and so charge the fact to be, that said act of the legislature, while purporting to be a general act, was intended to apply solely to the lands attempted to be taken within the limits of said Kansas City, Kansas, by said ordinance, "Exhibit A."

Plaintiffs further allege that no notice, either personal or by publication or otherwise, was ever given to said railway company of the intention of said city to enact the ordinance in question or to take the territory in question into the said city, and that said railway company had no opportunity to be heard before the council of said city upon the subject-matter of said ordinance or to protest against the passage of said ordinance.

Plaintiffs further allege that the lands so attempted to be taken within the boundaries of said city, as aforesaid, and owned by the said Union Pacific Railway Company, except that portion thereof used for railroad purposes and assessed by the State board of railroad assessors, appear upon the tax-rolls of said county of Wyandotte, now in the hands of the county treasurer thereof, under the following descriptions, and are assessed for the year of 1893 at the following values, which valuations appear upon said tax-rolls:

Description No. 1.—All that portion of the east thirty (30) acres of the northwest quarter of section fifteen (15), township eleven (11), range twenty-five (25), being seventeen and twenty one-hundredths acres (17.20), lying west of and adjacent to county road (Fifth street) running through said tract of land from north to south; valuation, eleven thousand four hundred sixty-five ($11,465.00) dollars.

Description No. 4.—Commencing at a point seven hundred fifty-three feet (753) north of the southeast corner of the southwest quarter of the southwest quarter of section fifteen (15), township eleven (11), range twenty-five (25), said point being fifty feet north of center line of Kansas City and Topeka railway; thence west fifty (50) feet from and parallel to said center line of said railway to west line of said section fifteen (15), township 11, range 25; thence north along west line of said section 15 to a point fifty (50) feet south of center line of most southerly track of Union Pacific Railway Company, measured at right angles thereto; thence easterly fifty (50) feet from and parallel to said center line of said track to east line of southwest quarter of southwest quarter of section fifteen (15), township eleven (11), range twenty-five (25); thence south on said west line

to beginning, being three and eighty-five-hundredths acres (3.85); valuation, three thousand five hundred thirty ($3,530.00) dollars.

Description No. 5.—Commencing at a point which is three hundred seventy and fifty-two one-hundredths (370.52) feet north and thirty-five (35) feet west from southeast corner of southwest quarter of southwest quarter of section fifteen (15), township eleven (11), range twenty-five (25); thence westerly three hundred thirty-two and forty-eight-hundredths (332.48) feet south from and parallel to center line of main track of Kansas City and Topeka railway to west line of section fifteen (15), township eleven (11), range twenty-five (25); thence south on said west line of said section fifteen (15), township eleven (11), range twenty-five (25), to southwest corner thereof; thence east on south line of section 15, township eleven (11), range twenty-five (25), thirteen hundred and five and four-tenths (1,305.4) feet to a point thirty-five feet (35) west from the southeast corner of southwest quarter (¼) of southwest quarter (¼) of section fifteen (15), township eleven (11), range twenty-five (25); thence north three hundred seventy and fifty-two hundredths (370.52) feet to beginning, being thirteen and eighty-five-hundredths (13.85) acres; valuation, nine thousand two hundred fifty dollars ($9,250.00).

Description No. 6.—Commencing at a point fifty (50) feet south of center track of Union Pacific railway, measured at right angles thereto, which point is eight (8) poles east and forty (40) poles south of northeast corner of southwest quarter (¼) of section fifteen (15), township eleven (11), range twenty-five (25), thence westerly fifty (50) feet south and parallel to said center line of track to east line of county road running through said tract of land from north to south; thence southerly along east line of said county road to east line of southwest quarter (¼) of southwest quarter (¼) of section fifteen (15), township eleven (11), range twenty-five (25); thence south on said east line to a point fifty-two (52) poles north of southeast corner of southwest quarter (¼) of southwest quarter (¼) of section fifteen (15), township eleven (11), range twenty-five (25); thence north on said line twenty-eight (28) poles; thence east eight (8) poles; thence north forty (40) poles to beginning, excepting right of way one hundred (100) feet wide, fifty (50) feet on each side of center line of Union Pacific Railway tracks, as located through said lands, being twenty-five (25) acres; valuation, twenty-two thousand five hundred dollars ($22,500.00).

Description No. 7.—Commencing at a point six hundred fifty-nine and six-tenths (659.6) feet south of a point on north line of southeast quarter (¼) of section fifteen (15), township eleven (11), range twenty-five (25), and one hundred thirty-two (132) feet east of center of said section, thence south six hundred twenty-one and nine-tenths (621.9) feet, west one hundred thirty-two (132) feet, south two hundred fifty-two (252) feet, east one hundred eighty-two (182) feet to southwest corner of lot one (1), block one (1), McAlpine's addition to Armourdale; thence north along west line of said lot one (1), block one (1), one hundred seventy-five (175) feet to southwest corner of lot one (1), block two (2), in said addition; thence east along south line of

said block two (2) to the southeast corner of lot ten (10) thereof; thence north along east line of said lot ten (10) — southeast corner of lot eleven, block two (2); thence east along south line of north half (½) of block five (5) to southeast corner of lot eleven (11), block five (5), said addition; thence north along east line of said lot eleven (11) to southeast corner of lot ten (10), block four (4); thence east along south line of blocks nine (9) and ten (10), prolonged, to west line of lands owned by Swift Packing Company; thence north along said west line three hundred ninety-two and eight-tenths (392.8) — to the Union Pacific Railway Company's lands; thence west along south line of said railway company's lands fifteen hundred eighty-four and seventy-five-hundredths (1,584.75) feet to beginning, excepting right of way one hundred (100) feet wide, fifty (50) feet on each side of center line of Union Pacific tracks, as located through said land, twelve and five-hundredths (12.05) acres; valuation, twelve thousand and fifty dollars ($12,050.00).

Description No. 8.—Commencing eight (8) poles east of the northwest corner of southeast quarter (¼) of section fifteen (15), township eleven (11), range twenty-five (25), thence south forty (40) poles; thence east to a point fifty (50) feet west from center line of Armourdale spur to the east and west center line of section fifteen (15), township eleven (11), range twenty-five (25); thence west on said line of said section to beginning, excepting right of way one hundred (10–) feet wide, fifty (50) feet on each side of center line of Union Pacific tracks, as located through said land, being seventeen and fifty-hundredths (17.50) acres; valuation, seventeen thousand five hundred dollars ($17,500.00).

11 Description No. 9.—Commencing at intersection of east and west center line of section fifteen (15), township eleven (11), range twenty-five (25), with west bank of Kansas river, thence west along said center line of section fifteen (15), township eleven (11), range twenty-five (25), to a distance of seven hundred thirty-seven (737) feet, more or less, to a point fifty (50) feet from the center of the Armourdale spur of the Union Pacific railway, southerly fifty (50) feet from and parallel to center line of said Armourdale spur, a distance of six hundred eighty-two (682) feet, more or less, to north line of lands owned by Kansas City Stock Yards Company; thence east along said north line of lands owned by Kansas City Stock Yards Company to west bank of Kansas river; thence northerly along west bank of Kansas river to place of beginning, eleven and sixty-three-hundredths (11.63) acres; valuation, six thousand nine hundred and sixty dollars ($6,960.00).

Plaintiffs further allege that the balance of said lands belonging to said Union Pacific Railway Company and included within those attempted to be taken into said city of Kansas City by said ordinance, "Exhibit A," are used for railroad purposes and assessed by the State board of railroad assessors; that said lands, with other lands located in Wyandotte township, in said county, and used for railroad purposes, appear upon the tax-rolls of Wyandotte county for the year 1893 at the following values, which valuations appear upon said tax-rolls:

Road-bed, Right of Way, and Other Property Assessed and Returned by State Board of Assessors.

Main track, 11.75 miles, at $12,042.72 per mile	$141,502
Side track, 26.42 miles, at $2,500.00 per mile	66,050
Buildings and improvements	26,060
Total	$233,612

Plaintiffs further allege that that part of said lands used for railway purposes and assessed by the State board of railroad assessors which are included within said ordinance, "Exhibit A," would, if divided from the balance of the right of way located in Wyandotte township and correctly apportioned, appear upon the tax-rolls of said county for the year of 1893 under the following descriptions and at the following valuations:

Road-bed, Right of Way, and Other Property Assessed and Returned by the State Board of Railroad Assessors.

Main track, 1.71 miles, at $12.042.72 per mile	$20,593.00
Side track, 25.75 miles, at $2,500.00 per mile	64,375.00
Buildings and improvements	26,000.00
Total	$110,968.00

Plaintiffs further allege that such portions of said land owned by the Union Pacific Railway Company not actually used for railroad purposes are vacant and unoccupied lands, which are held and possessed by said railroad company for railroad purposes.

Plaintiffs further allege that the said city of Kansas City, Kansas, has levied and certified to the county clerk of said county of Wyandotte a tax of twenty-nine and six-tenths (29 6) mills on the dollar against all taxable property located in said city for the year 1893, and that said tax has been extended and charged by the county clerk upon the tax-rolls of the said county against the above-described property of said Union Pacific Railway Company, making the amount of taxes levied against each of said pieces of property by the said city of Kansas City for the year 1893 as follows, to wit:

12

Description No. 1.—Valuation	$11,465.00	Tax	$350.83
Description No. 4.—Valuation	3,530.00	Tax	104.49
Description No. 5.—Valuation	9,250.00	Tax	273.80
Description No. 6.—Valuation	22,500.00	Tax	666.00
Description No. 7.—Valuation	12,050.00	Tax	356.68
Description No. 8.—Valuation	17,500.00	Tax	518.00
Description No. 9.—Valuation	6,960.00	Tax	206.02
Total			$2,475.82

And in the aggregate the sum of two thousand four hundred seventy-five dollars and eighty-two cents ($2,475.82) taxes levied by the said city of Kansas City against said property for the year 1893.

Plaintiffs further allege that said defendant, The Board of Education of Kansas City, has levied and certified to the county clerk of said county a tax of eleven and one-tenth (11.1) mills on the dollar against all taxable property located within the boundaries of said city for the year 1893, and that the said tax has been extended and charged by the county clerk of said county upon the tax-rolls of said county against the above-described property of said Union Pacific Railway Company, making the amount of taxes levied against each of said pieces of property by said board of education for the year of 1893 as follows, to wit:

Description No. 1.—Valuation....	$11,465.00	Tax....	127.26
Description No. 4.—Valuation....	3,530.00	Tax....	39.18
Description No. 5.—Valuation....	9,250.00	Tax....	102.68
Description No. 6.—Valuation....	22,500.00	Tax....	240.75
Description No. 7.—Valuation....	12,050.00	Tax....	133.76
Description No. 8.—Valuation....	17,500.00	Tax....	194.25
Description No. 9.—Valuation....	6,960.00	Tax....	77.25
Total....			$924.13

And in the aggregate the sum of nine hundred twenty-four dollars and thirteen cents ($924.13) taxes levied by said board of education against said property for the year 1893.

Plaintiffs further allege that said defendant, Township of Wyandotte, has levied and certified to the county clerk of said county of Wyandotte a tax of nine mills (.009) on the dollar against all the taxable property located in said township for the year 1893, and that said tax has been extended and charged by the county clerk of said county upon the tax-rolls of said county against all that portion of the property of said Union Pacific Railway Company attempted to be taken within the limits of said Kansas City by said ordinance, "Exhibit A," which is used for railway purposes, together with other right of way belonging to said railway company located within said Wyandotte township, making the total amount of taxes levied by said township against all of said property used for right-of-way purposes as follows, to wit, the sum of two thousand one hundred two dollars and forty-four cents ($2,102.44).

Plaintiffs further allege that the tax levied by said township would, if extended against that portion of said property used for railroad purposes and included within said ordinance, "Exhibit A," amount to nine hundred ninety-eight dollars and seventy-one cents ($998.71).

Plaintiffs further allege that said defendant, School District Number Nine (9), has levied and certified to the county clerk of said Wyandotte county a tax of five (.005) mills on the dollar against all the taxable property located in said school district for the year 1893, and that said tax has been extended and charged by the county

clerk of said county upon the tax-rolls of said county against
13 all that portion of the property of said Union Pacific Railway Company attempted to be taken within the limits of said Kansas City by said ordinance, "Exhibit A," which is used for railroad purposes, together with the other right of way belonging to said company located within said School District Number Nine (9), making the total amount of taxes levied by said school district against all of said property used for right-of-way purposes as follows, to wit, the sum of six hundred eighty-six dollars and ten cents ($686.10).

Plaintiffs further allege that the tax levied by the said school district would, if extended and charged against that portion of said property used for railway purposes and included in the said ordinance, "Exhibit A," amount to five hundred fifty-four dollars and eighty-four cents ($554.84).

Plaintiffs further allege that said defendant-, City of Kansas City and Board of Education of Kansas City, claimed jurisdiction over all the land described in said ordinance, "Exhibit A," including that used for railroad purposes, and claim that its levies should have been extended and charged against all of said property, and further claim that the levies of said Wyandotte township and school district number nine (9) should not have been extended and charged against any portion thereof.

Plaintiffs further allege that said township of Wyandotte and said school district number nine claim that none of said lands described in said ordinance, "Exhibit A," were legally taken into the limits of Kansas City, and that the same remain within the jurisdiction of said Wyandotte township and said school district, and that its levy should have been extended against all of the lands included in said ordinance, "Exhibit A," and that the levies of said Kansas City and the board of education of Kansas City should not have been extended and charged against any portion thereof.

Plaintiffs allege that they have been advised, and accordingly allege, that the contention of said township and school district is correct. Plaintiffs say, however, that they stand ready and willing to pay the taxes assessed against all of said property as soon as it has been finally determined which taxes are properly a lien thereon.

Plaintiffs further allege that said M. G. McLean, county treasurer of said county, now has possession of said tax-rolls of Wyandotte county for the year 1893 and proposes to and will collect the amounts of said city and school taxes levied against said property as aforesaid, and that said county clerk will continue from year to year to extend the levies of said Kansas City and said board of education of Kansas City against said property of the Union Pacific Railway Company, unless prevented by the injunction of some court of competent jurisdiction from doing so.

Wherefore, as plaintiffs are remediless at common law, they pray this court to issue an injunction against said M. G. McLean, as county treasurer of said county, and against his deputy, assistants, and successors in office, forever enjoining them from collecting the

amount of said city and said school taxes levied and charged against said property for the year 1893, as aforesaid, amounting in the aggregate to the sum of three thousand three hundred and ninety-nine dollars and ninety-five cents ($3,399.95), and against the said Charles E. Brace, as county clerk of said county, his deputies, assistants, and successors in office, forever enjoining them from extending any further levies of the said city of Kansas City and of the board of education of Kansas City against the above-described property of said Union Pacific Railway Company, and that they may be temporarily enjoined from so doing until the final hearing of this cause.

14 Plaintiffs further pray that in the event of its being finally determined in this case that said lands included in said "Exhibit A" are a part of Kansas City, under and by virtue thereof, that the said county treasurer be forever enjoined from collecting the taxes levied and charged against that portion of said property included in said ordinance, "Exhibit A," which are used for railroad purposes and which appear upon said tax-rolls in favor of said township *at* Wyandotte and school district number nine (9), and that said county clerk be forever enjoined from extending said township and school district levies against said property last above mentioned, and to the end that the rights of all parties concerned may be properly protected during this litigation, plaintiffs pray for a temporary injunction against said county treasurer restraining him from collecting the amount of said township and school taxes until the final termination of this case.

Plaintiffs pray for such other and further or different relief as in equity and good conscience they may be entitled to.

A. L. WILLIAMS,
N. H. LOOMIS, AND
R. W. BLAIR,
Attorneys for Plaintiffs.

STATE OF KANSAS, } ss:
Wyandotte County, }

A. W. Scribner, being first duly sworn, says that he is the tax commissioner for the plaintiffs; that as such tax commissioner he has charge of the payments of the taxes levied against the property of said Union Pacific Railway Company; that said plaintiffs cannot personally verify this petition for the reason that they are not within the State of Kansas, and furthermore because they are not sufficiently familiar with the facts in this case to make such verification.

Affiant further states that he has read the foregoing petition and knows the contents thereof, and that the allegations of fact therein contained are true.

A. W. SCRIBNER.

Subscribed and sworn to before me this 15th day of December, 1893.

[SEAL.] A. L. BERGER,
Notary Public.

My commission expires January 23rd, 1895.

Præcipe.

To the clerk of said court:

Please issue summons in the above-entitled cause directed to the sheriff of Wyandotte county, Kansas, and made returnable according to law; suit brought to restrain collection of taxes and other relief.

A. L. WILLIAMS,
N. H. LOOMIS, AND
R. W. BLAIR,
Attorneys for Plaintiffs.

15 EXHIBIT "A."

Ordinance No. 2163.

An ordinance adding certain lands therein described known as the Union Pacific lands to and making the same a part of the city of Kansas City, Kansas.

Whereas, a certain unplatted territory belonging to the Union Pacific Railroad Company lies upon and mainly within the city of Kansas City, Kansas, and is so situated as to be bounded on three-fourths (¾) of its boundary line by platted territory of, and adjoining to said city; which said railroad land, by virtue of its location, enjoys the benefits of said city without sharing its burdens, now therefore,

Be it ordained by the mayor and councilmen of the city of Kansas City, Kansas:

SECTION 1. That the following-described territory, to wit: Commencing at the northeast corner of the southwest quarter (¼) of section fifteen (15), township eleven (11), range twenty-five (25) east, in Wyandotte county, Kansas, thence south forty (40) poles, thence east to the Kansas river, thence down the same to the prolongation of the east and west center line of said section fifteen (15) thence west to beginning.

Also commencing at the northeast corner of the southeast quarter (¼) of section fifteen (15), township eleven (11), range twenty-five (25) east, in Wyandotte county, Kansas, thence west to the center line of said section fifteen, thence north eighty (80) poles, thence west fifty-seven (57) poles, thence south to the southerly line of Fifth street in the original town site of Armstrong, thence along the southerly line of Fifth street to its intersection with the southerly line of the Muncie boulevard, thence westerly along the southerly line of the Muncie boulevard to the west line of said section fifteen (15), thence south to the southwest corner of the southwest quarter (¼) of section fifteen (15), thence east eighty (80) poles, thence north fifty-two (52) poles, thence east eighty-five (85) poles, thence north twenty-eight (28) poles, thence east eight (8) poles, thence north one hundred ninety-nine (199) feet, thence east three hundred fifty-five and eight-tenths (355.8) feet to the east line of Third street, in McAlpine's addition, thence north one hundred sixty (160)

feet, thence east two hundred seventy-five (275) feet to the center line of Second street in McAlpine's addition, produced, thence north one hundred thirty (130) feet, thence east three hundred fifteen (315) feet to the prolongation of the center line of First street in McAlpine's addition, thence north one hundred thirty-two and eight-tenths (132.8) feet, thence east to the east line of section fifteen (15), thence north forty (40) poles to the beginning.

Also commencing at a point where the northerly line of the Union Pacific Railway Company's right of way intersects the east line of section sixteen (16) township eleven (11) range twenty-five (25) east, in Wyandotte county, Kansas, thence northwesterly along said northerly line of the right of way of the Union Pacific railway, thence southeasterly along the southerly line of said right of way, to the east line of said section sixteen (16), thence north about one hundred (100) feet to the beginning.

Said tracts being contiguous and containing in the aggregate one hundred seventy-two (172) acres, and hereby *is* added to and made a part of the city of Kansas City, Kansas.

SECTION 2. This ordinance shall take effect and be in force
16 from and after its passage and publication in the Kansas City Gazette.

Passed in council March 8th, 1892.

WILLIAM ALBRIGHT, *City Clerk.*

Approved March 11th, 1893.

THOMAS F. HANNAN, *Mayor.*

Published March 11th, 1892.

Endorsed: No. 1647. S. H. H. Clark *et al.*, as receivers of the Union Pacific Railway Company, plaintiffs, *vs.* The City of Kansas City, Kansas, *et al.*, defendants. Petition and precipe. Filed December 15th, 1893. S. C. McGonigal, clerk, by F. L. Kenny, deputy.

17 In the Court of Common Pleas of Wyandotte County, Kansas.

S. H. CLARK ET AL., as Receivers of the Union Pacific Railway Company, Plaintiffs,
vs.
THE CITY OF KANSAS CITY, KANSAS; THE BOARD OF Education of Kansas City, Kansas; M. G. McLean, as Treasurer of Wyandotte County, Kansas; The Township of Wyandotte, of Wyandotte County, Kansas, and School District No. Nine (9) of Wyandotte County, Kansas, Defendants. } No. 1647.

Order.

Upon this 15th day of December, 1893, comes the plaintiffs above named, by N. H. Loomis, their attorney, and present to the court their petition in the above-entitled cause, duly verified, wherein they pray for a temporary injunction against the said M. G. McLean, as county treasurer of Wyandotte county, Kansas, restraining him

from collecting certain taxes therein mentioned, upon due consideration whereof it is by the court ordered that the hearing upon said application for a temporary injunction be set for January 8th, 1894, at 10 o'clock a. m., or as soon thereafter as the attention of the court may be had. In the meantime and until further order of the court, it is hereby ordered that the said M. G. McLean, as county treasurer, his deputies, assistants, and successors in office, be, and they are hereby, restrained from collecting the taxes referred to in plaintiffs' petition, in accordance to the prayer thereof, to wit, the levies of the city of Kansas City, Kansas, and the board of education of Kansas City, Kansas, for the year 1893, against descriptions of land numbered one, four, five, six, seven, eight, and nine, as shown in said petition; also the levies of said Wyandotte township and said school district No. nine (9) for the year 1893 against so much of the road-bed, right of way, and other property of said railway company assessed by the State board of assessors as is located within the descriptions contained in Exhibit "A" to said petition and which is described as follows:

Main track, 1.71 miles, at $12,042.72 per mile	$20,593.00
Side track, 25.75 miles, at $2,500 per mile	64,375.00
Buildings and improvements...	26,000.00
Total	110,968.00

O K.

T. P. ANDERSON, *Judge.*

Attest: C. S. McCONIGAL, *Clerk,*
[SEAL.] By F. L. KENNEY, *Deputy.*

18 UNITED STATES OF AMERICA.

STATE OF KANSAS, *Wyandotte County,* } ss:

Court of Common Pleas.

The State of Kansas to the sheriff of Wyandotte county, in said State, Greeting:

You are hereby commanded to notify The City of Kansas City, Kansas; The Board of Education of the City of Kansas City, Kansas; M. G. McLean, as county treasurer of Wyandotte county, Kansas; Charles E. Bruce, as county clerk of Wyandotte county, Kansas; The Township of Wyandotte, of Wyandotte county, Kansas, and School District Number Nine of Wyandotte County, Kansas, defendants, that they have been sued by S. H. Clark, Oliver W. Mink, E. Ellery Anderson, J. W. Doan, and F. R. Coudert, as receivers of the Union Pacific Railway Company, plaintiffs, in the court of common pleas, sitting within and for the county of Wyandotte *county*, and that unless they answer by the twelfth day of January, 1894, the petition of said plaintiff- against them filed in

the clerk's office of the court aforesaid, the same will be taken as true and judgment rendered accordingly.

You will make due return of this summons on the 23rd day of December, 1893.

Witness my hand and the seal of the said court, affixed at my office, in the city of Kansas City, this 15th day of December, 1893.

[SEAL.] C. S. McCONIGAL, *Clerk*,
By F. L. KENNEY, *Deputy*.

STATE OF KANSAS, }
County of Wyandotte, } *ss*:

Received this summons on the 15th day of December, 1893, at 10 o'clock a. m., and served the same in my county on the within defendant, The City of Kansas City, Kansas, by delivering to N. Barnes personally, as mayor of said city, a true copy of said summons, with all the endorsements thereon; served the same on The Board of Education of the City of Kansas City, Kansas, by delivering to J. H. Gadd personally, as president of said board, a true copy of said summons as above; served the same on M. G. McLean, as county treasurer of Wyandotte county, Kansas, by delivering to him personally a true copy of said summons as above; served the same on Charles E. Bruce, as county clerk of Wyandotte county, by delivering to him personally a true copy of said summons as above; served the same on The Township of Wyandotte, of Wyandotte county, Kansas, by delivering to James Moore personally, as trustee of said township, a true copy of said summons as above, and served the same on the School District No. Nine (9) of Wyandotte County, Kansas, by delivering to C. S. Meade personally, as director of said district, a true copy of said summons as above, on the 20th day of December, 1893.

S. S. PETERSON,
Sheriff of Wyandotte County, Kansas,
By J. S. CUMMINS, *Deputy*.

Copies	$1.50
Service	1.75
Mileage	2.00
Total	$5.25

19 Endorsed: No. 1647. Court of common pleas of Wyandotte county, Kansas. Summons. Issued December 15th, 1893. Returnable December 23rd, 1893. S. H. H. Clark *et al.*, receivers, *vs.* The City of Kansas City, Kansas, *et al.* Williams, Loomis & Blair, plaintiffs' attorneys. Filed December 28th, 1893. C. S. McGonigal, clerk, by F. L. Kenney, deputy. Temporary restraining order allowed.

20 And thereupon, on the 5th day of November, 1894, the plaintiffs herein filed with the clerk of said court their bond for twenty-five hundred ($2,500.00) dollars, a copy of which said

bond, together with the endorsements thereon, being in words and figures as follows, omitting the caption thereof:

Bond.

Know all men by these presents that J. R. Mulvane and Henry Strong, of Topeka, Shawnee county, Kansas, are held and firmly bound unto the above-named defendants and each and every of them in the penal sum of twenty-five hundred dol-ars; for the payment of which they hereby bind themselves, their heirs, executors, administrators, and assigns.

The condition- of the above obligation are such that whereas a temporary injunction was granted by said court in the above-entitled cause to take effect upon the filing by said plaintiffs of an injunction bond in the sum of twenty-five hundred dollars, subject to the approval of the clerk of this court:

Now, if the above-named plaintiffs shall save said defendants and each and every of them harmless from all damages which they or either of them may sustain if it be finally decided that said temporary injunction ought not to have been granted, then this obligation to be null and void; otherwise to remain in full force and effect.

In witness whereof said parties have hereunto set their hands and seals this 3rd day of November, A. D. 1894.

J. R. MULVANE.
HENRY STRONG.

STATE OF KANSAS, } ss:
County of Shawnee, }

The above-named J. R. Mulvane, of lawful age, being by me first duly sworn, deposes and says that he is worth over and above all legal exemptions and liabilities more than the sum of twenty-five hundred dollars.

J. R. MULVANE.

Subscribed and sworn to before me this 3rd day of November, 1894.

[SEAL.] FRANK E. SMITH,
Notary Public.

My commission expires February 27th, 1898.

STATE OF KANSAS, } ss:
County of Shawnee, }

The above-named Henry Strong, of lawful age, being by me first duly sworn, deposes and says that he is worth over and above all legal exemptions and liabilities more than the sum of twenty-five hundred dollars.

HENRY STRONG.

Subscribed and sworn to before me this 3rd day of November, 1894.

[SEAL.] FRANK E. SMITH,
Notary Public.

My commission expires February 27th, 1898.

21 The above bond approved November 5th, 1894.
GEO. H. JENKINS, *Clerk.*

Endorsed: S. H. H. Clark *et al.*, receivers, *vs.* The City of Kansas City, Kansas. Filed Nov. 5th, 1894. Geo. H. Jenkins, clerk.

And thereupon, on the 12th day of June, 1895, the defendants herein filed with the clerk of said court their demurrer to the petition of the *of the* plaintiff- herein filed, a copy of which demurrer being in words and figures as follows:

S. H. H. CLARK ET AL., Receivers, Plaintiffs,
vs.
THE CITY OF KANSAS CITY ET AL., Defendants. } No. 1647.

Demurrer.

The City of Kansas City, Kansas; Benjamin Schnierle, county treasurer; Charles E. Bruce, county clerk of Wyandotte county, Kansas, and The Board of Education of the City of Kansas City, Kansas, demur to the petition in this action, and for cause of demurrer state that it appears upon the face of the petition:

First. That the petition does not state facts sufficient to constitute a cause of action.

K. P. SNYDER AND
T. A. POLLOCK,
Attorneys for the Defendants, Kansas City et al.
S. C. MILLER,
Attorney for Defendant Benjamin Schnierle, County Treasurer, and C. E. Bruce, County Clerk.

Endorsed: Court of common pleas. S. H. H. Clark *et al.*, receivers, *vs.* The City of Kansas City, Kansas, *et al.* Demurrer. Filed June 12th, 1895. Geo. H. Jenkins, clerk.

22 In the Court of Common Pleas of Wyandotte County, Kansas.

S. H. H. CLARK ET AL., Receivers, Plaintiffs,
vs.
THE CITY OF KANSAS CITY, KANSAS, ET AL., Defendants.

Journal Entry.

Now, on this 12th day of June, 1895, the defendants are given leave to plead instanter, not to delay trial.

And thereupon, on the 13th day of June, 1895, the plaintiffs herein filed with the clerk of said court their certain motion to continue the prosecution of this case in the name of S. H. H. Clark *et al.*, a copy of which motion, omitting the caption thereof, being in words and figures as follows:

Motion.

Now come the above-named plaintiffs and show to the court that subsequent to the filing of the petition in this cause and upon the 16th day of July, 1894, the above-named S. H. H. Clark, Oliver W. Mink, and E. Ellery Anderson were by the United States circuit court for the district of Kansas, in an action pending in said court wherein Russell Sage and George J. Gould, trustees, were complainants and The Union Pacific Railway Company *et al.* were defendants appointed receivers of that portion of the railway and properties of the Union Pacific Railway Company covered by the consolidated mortgage of the Kansas Pacific Railway Company, dated the first day of May, 1879.

That by said order the said Clark, Mink, and Anderson, as receivers, were directed to retain possession of the lands, land grant, railroad, and property of said Union Pacific Railway Company covered by said Kansas Pacific consolidated mortgage, and as receivers in said Sage and Gould case to continue to maintain and operate all and singular the lines of railway embraced in said mortgage as a part of the Union Pacific system.

Said plaintiffs further show to the court that immediately after their appointment as receivers in the Sage and Gould case, as aforesaid, the said Clark, Mink, and Anderson duly qualified and entered upon the discharge of their duties as such receivers.

That thereafter John W. Doane and Frederick R. Coudert were duly appointed by the United States circuit court for the district of Kansas in said case of Sage and Gould against The Union Pacific Railway Company *et al.* additional receivers for that portion of the railway lines and property of the Union Pacific Railway Company covered by said Kansas Pacific consolidated mortgage, with powers in all respects similar and equal to those conferred upon said Clark, Mink, and Anderson; that immediately after their appointment said Doane and Coudert duly qualified and entered upon the discharge of their duties as such receivers.

Said plaintiffs further show to the court that all of the property in controversy in this cause is covered by said Kansas Pacific consolidated mortgage, and that the same is now under the exclusive charge and custody of said S. H. H. Clark, Oliver W. Mink, E. Ellery Anderson, John W. Doane, and Frederick R. Coudert, as receivers in said case of Sage and Gould, trustees, against The Union Pacific Railway Company *et al.*, and that as receivers in said Sage and Gould case they have succeeded to all the powers conferred upon them as receivers under the terms of their original appointment, the said original appointment being the same appointment referred to in the petition filed in this cause.

Wherefore the said S. H. H. Clark, Oliver W. Mink, E. Ellery Anderson, John W. Doane, and Frederick R. Coudert pray that this action may be continued in their names, as receivers of the Union Pacific Railway Company, appointed in the case of
23 Russel Sage and George J. Gould, trustees, against The Union Pacific Railway Company *et al.*, pending in the United States circuit court for the district of Kansas, first division.

A. L. WILLIAMS,
N. H. LOOMIS, AND
R. W. BLAIR,
Attorneys for said Receivers.

STATE OF KANSAS, } ss:
Shawnee County, }

N. H. Loomis, being duly sworn, says that he is one of the attorneys for the above-named receivers; that he has read the foregoing and knows the contents thereof, and that the statements of fact therein contained are true.

N. H. LOOMIS.

Subscribed and sworn to before me this 23rd day of March, A. D. 1895.

[SEAL.] FRANK E. SMITH,
Notary Public.

My commission expires February 27th, 1898.

Endorsed: No. 1647. In the court of common pleas of Wyandotte county, Kansas. S. H. H. Clark *et al.*, receivers Union Pacific Railway Company, plaintiffs, *vs.* The City of Kansas City, Kansas, *et al.*, defendants. Motion. Motion No. 2090. Filed June 13th, 1895. Geo. H. Jenkins, clerk.

24 In the Court of Common Pleas of Wyandotte County, Kansas.

S. H. H. CLARK, OLIVER W. MINK, E. ELLERY ANDERSON, J. W. Doane, and F. R. Coudert, Receivers of the Union Pacific Railway Company, Plaintiffs,

vs.

THE CITY OF KANSAS CITY, KANSAS; THE BOARD OF EDUCATION of the City of Kansas City, Kansas; M. G. McLean, as County Treasurer of Wyandotte County, Kansas; Charles E. Bruce, as County Clerk of Wyandotte County, Kansas, and School District Number Nine (9) of Wyandotte County, Kansas, Defendants.

Journal Entry.

Upon this 13th day of June, 1895, the plaintiffs appearing by A. L Williams, Moore and Berger, and N. H. Loomis, their attorneys, and the defendants appearing by K. P. Snyder and T. J. Pollock, their attorneys, and it being made to appear to the court that the above-named S. H. H. Clark, Oliver W. Mink, E. Ellery Ander-

son, J. W. Doane, and F. R. Coudert have since the commencement of this action been appointed receivers of that portion of the Union Pacific Railway Company covered by the consolidated mortgage of the Kansas Pacific Railway Company, including all of the property in controversy in this cause, by the United States circuit court for the district of Kansas, in an action therein pending, wherein Russel Sage and George J. Gould are complainants and The Union Pacific Railway Company *et al.* are defendants, and that as such receivers in the Sage and Gould case they now have exclusive charge and control of all the property in controversy in this cause, and have succeeded to all the powers possessed by them over said property under their original appointment, said original appointment being the same appointments referred to in plaintiffs' petition filed herein.

And now, upon the application of said S. H. H. Clark, Oliver W. Mink, E. Ellery Anderson, J. W. Doane, and F. R. Coudert and all parties consenting thereto, it is by the court ordered that this cause be continued in the name of said S. H. H. Clark, Oliver W. Mink, E. Ellery Anderson, J. W. Doane, and F. R. Coudert, as receivers of the Union Pacific Railway Company, appointed in the case of Russell Sage and George J. Gould, trustees, against The Union Pacific Railway Company *et al.*, pending in the United States circuit court for the district of Kansas, first division.

It being further made to appear to the court that the above-named M. G. McLean has been succeeded as county treasurer of Wyandotte county by Benjamin Schnierle, it is by the court ordered, all parties consenting thereto, that said Benjamin Schnierle be substituted as a party defendant herein in the place of said M. G. McLean.

25 In the Court of Common Pleas of Wyandotte County, Kansas.

S. H. H. CLARK, OLIVER W. MINK, E. ELLERY ANDERSON, J. W. Doane, and F. R. Coudert, Receivers of the Union Pacific Railway Company, Plaintiffs,

vs.

THE CITY OF KANSAS CITY, KANSAS; THE BOARD OF EDUCATION of the City of Kansas City, Kansas; Benjamin Schnierle, as County Treasurer of Wyandotte County, Kansas; Charles E. Bruce, as County Clerk of Wyandotte County, Kansas; The Township of Wyandotte, Wyandotte County, Kansas, and School District Number Nine (9) of Wyandotte County, Kansas, Defendants.

Journal Entry.

JULY 3RD, 1895.

Upon this day this cause comes regularly on for final hearing upon the issues joined herein, the defendants having announced that they intend to stand upon their demurrer to plaintiffs' petition.

Plaintiffs appeared by A. L. Williams, Moore and Berger, and N. H. Loomis, their attorneys.

The defendants appeared by K. P. Snyder and T. A. Pollock, their attorneys.

The court, having heard the arguments of counsel and being fully advised in the premises, finds and adjudges that the statute under which the property of the Union Pacific Railway Company in controversy in this cause was attempted to be taken within the limits of Kansas City, Kansas, to wit, chapter 74 of the Session Laws of Kansas for 1891, being an act entitled "An act relating to cities of the first class, and adding thereto certain adjoining territory," is unconstitutional, null, and void, and therefore that said property of the Union Pacific Railway Company is not and has not been included within the limits of Kansas City, Kansas, because said ordinance set forth in plaintiffs' petition is void, being based upon an unconstitutional law, and is not and has not been subject to the jurisdiction of said city.

Wherefore the demurrer of the defendants to plaintiffs' petition is overruled; to which ruling of the court defendants duly except.

It is therefore ordered, adjudged, and decreed that said defendant, Benjamin Schnierle, as county treasurer of Wyandotte county, Kansas, his deputies, assistants, clerks, and successors in office, and each and every of them, be, and they are hereby, permanently enjoined from collecting the tax levies or assessments of said City of Kansas City, Kansas, and The Board of Education of the City of Kansas City, Kansas, against the following-described lands of the Union Pacific Railway Company:

1. Commencing at the northeast corner of the southeast quarter (¼) of section fifteen (15), township eleven (11), range twenty-five (25) east, in Wyandotte county, Kansas, thence south forty (40) poles; thence east to the Kansas river; thence down the same to the prolongation of the east and west center line of said section fifteen (15); thence west to beginning.

2. Also commencing at the northeast corner of the southeast quarter (¼) of section fifteen (15), township eleven (11), range twenty-five (25) east, in Wyandotte county, Kansas, thence west to the center of said section fifteen (15); thence north eighty (80) poles; thence west fifty-seven (57) poles; thence south to the northerly line of Euclid avenue, in the original town site of Armstrong; thence easterly along the northerly line of the Euclid avenue to the southerly line of Fifth street; thence along the southerly line on Fifth street to its intersection with the southerly line of Muncie boulevard; thence westerly along the southern line of the Muncie boulevard to the west line of said section fifteen (15); thence south to the southwest corner of the southwest quarter (¼) of section fifteen (15);
26 thence east eighty (80) poles; thence north fifty-two (52) poles; thence east eighty-five (85) poles; thence north twenty-eight (28) poles; thence east eight (8) poles; thence north one hundred ninety-nine (199) feet; thence east three hundred fifty-five & eight-tenths (355.8) feet to the east line of Third street, in McAlpine's addition; thence north one hundred sixty (160) feet; thence east two hundred seventy-five (275) feet to the center line of Second street, in McAlpine's addition, produced; thence north one hundred thirty (130) feet; thence east three hundred fifteen (315) feet to the prolongation of the center line of First street, in McAlpine's addition; thence

north one hundred thirty-two and eight-tenths (132.8) feet; thence east to the east line of said section fifteen (15); thence north forty (40) poles to beginning.

Excepting, however, from the foregoing description the following-described tract of land conveyed by the Union Pacific Railway Company to the Kansas City and Topeka Railway Company, March 11th, 1889, to wit:

A strip of land three hundred eighty-two and forty-eight-hundredths (382.48) feet wide through the west half (½) of the southwest quarter (¼) of said section fifteen (15), more specifically described as follows:

Beginning at a point five hundred fifty-three (553) feet north of the southeast corner of the southwest quarter (¼) of the southwest quarter (¼) of said section fifteen (15), said point being one hundred fifty (150) feet south of the center line of the main track of the Kansas City and Topeka railway as now located, thence westerly and parallel to the center line of said track thirty-five (35) feet; thence south one hundred eighty-two and forty-eight-hundredths (382.48) feet distant therefrom to the west line of said section fifteen (15); thence north along the west line of said section fifteen (15) three hundred ninety-two and thirty-hundredths (392.30) feet; thence easterly and parallel to the center line of said main track and fifty (50) feet distant therefrom thirteen hundred sixty-two (1,362) feet to the east line of the west half (½) of the southwest quarter (¼) of said section fifteen (15); thence south two hundred (200) feet to the place of beginning.

3. Also commencing at a point where the northerly line of the Union Pacific Railway Company's right of way intersects the east line of section sixteen (16), township eleven (11), range twenty-five (25) east, in Wyandotte county, Kansas, thence northwesterly along said northerly line of the right of way of the Union Pacific railway to the west line of said section sixteen (16); thence south along the west line of said section sixteen (16) about one hundred (100) feet to the southerly line of the right of way of the Union Pacific railway; thence southeasterly along the southerly line of said right of way to the east line of said section sixteen (16); thence north about one hundred (100) feet to beginning.

It is further ordered, adjudged, and decreed by the court that said defendants, C. E. Bruce, as county clerk of said county, his deputies, assistants, clerks, and successors in office, and each and every of them, be, and they are hereby, enjoined from extending upon the tax-rolls of said Wyandotte county, Kansas, against said property of the Union Pacific Railway Company any of the tax levies or assessments of said city of Kansas City, Kansas, or of the said board of education of Kansas City, Kansas.

It is further ordered by the court by consent of the parties that the levies of the proper townships and school districts be extended against said property of the Union Pacific Railway Company upon the tax-rolls of said Wyandotte county in lieu of the levies of said city of Kansas City, Kansas, and said board of education of Kansas City, Kansas, hereby enjoined, but no penalties, interest, or costs

shall be added, said taxes to be collected in the manner prescribed by law.

It is further ordered that the extension of said levies against said property as aforesaid and the collection of said taxes be staid until this cause has been finally disposed of on appeal to the su-
27 preme court or until defendants have filed a written statement herein declaring their intention not to appeal.

It is further ordered, adjudged, and decreed that the plaintiffs do have and recover of and from the said defendants their costs herein, taxed at fifty-six dollars and forty cents ($56.40), for which let execution issue.

It is further ordered, adjudged, and decreed that this judgment shall not in any way affect any rights vested in the defendants or either of them by virtue of any contract heretofore entered into between said Union Pacific Railroad Company and said Kansas City for the building of a viaduct over the land above described.

Defendants except to the foregoing judgment.

Dated July 3rd, 1895.

O K.

N. H. LOOMIS,
Attorney for Plaintiffs.

And thereafter, on the 18th day of September, 1895, there was filed with the clerk of said court in the above-entitled case a further agreement, a copy of which is in words and figures as follows:

It is also further agreed that this decree shall not in any way affect any rights the said city has in Mill street, running across the said Union Pacific Railway Company's ground.

28 *Certificate.*

STATE OF KANSAS, }
County of Wyandotte, } *ss:*

I, J. W. Howlitt, clerk of the court of common pleas of Wyandotte county, Kansas, do hereby certify that the above and foregoing are true and correct copies and a true and correct transcript of the petition, summons and return thereon, demurrer to petition, motions, orders, pleadings, findings, judgments, and all other acts and proceedings of the court and of the whole record in the case of S. H. H. Clark, Oliver W. Mink, E. Ellery Anderson, J. W. Doane, and F. R. Coudert, as receivers of the Union Pacific Railway Company, plaintiffs, *vs.* The City of Kansas City, Kansas; The Board of Education of the City of Kansas City, Kansas; M. G. McLean, as county treasurer of Wyandotte county, Kansas; Charles E. Bruce, as county clerk of Wyandotte county, Kansas; The Township of Wyandotte, of Wyandotte county, Kansas, and School District No. Nine (9) of Wyandotte County, Kansas, defendants, No. 1647, in the court of common pleas of Wyandotte county, Kansas.

In witness whereof I have hereunto affixed my official seal and signature this 16th day of January, 1896.

[SEAL.] J. W. HOWLETT,
Clerk of the Court of Common Pleas of Wyandotte County, Kansas.

Filed March 5th, 1896.

C. J. BROWN,
Clerk Supreme Court.

Exhibit "A."

29 And on the 5th day of March, 1898, there was issued from the office of the clerk of the supreme court of the State of Kansas a summons in error, which, with the service thereof endorsed thereon, is in words and figures as follows, to wit:

30 STATE OF KANSAS, } ss:
Supreme Court, }

The State of Kansas to the sheriff of Shawnee county, Greeting:

You are hereby commanded to notify S. H. H. Clark, Oliver W. Mink, E. Ellery Anderson, J. W. Doane, and F. R. Coudert, as receivers of the Union Pacific R'l'y Co., defendants in error, that The City of Kansas City, Kansas, *et al.*, plaintiffs in error, did, on the 5th day of March, A. D. 1896, file in the clerk's office of the supreme court of Kansas a petition in error and transcript of record, the object of which is to obtain a reversal of a certain judgment rendered by the court of common pleas sitting within and for the county of Wyandotte and State of Kansas in an action pending before said court, wherein the said defendants in error were plaintiffs and the said plaintiffs in error were defendants.

You will make due return of this summons in error on or before the 16th day of March, A. D. 1896.

Witness my hand and the seal of the supreme court affixed hereto, at my office, in Topeka, this 5th day of March, A. D. 1896. [SEAL.]

C. J. BROWN,
Clerk Supreme Court.

31 [Endorsed:] No. 10571. Supreme court, State of Kansas. The City of Kansas City, Kansas, *et al. vs.* S. H. H. Clark *et al.*, rec's U. P. R'l'y Co. Summons in error. Issued March 5th, 1896. Returnable March 16th, 1896. Filed Mar. 12, 1896. C. J. Brown, clerk sup. court. S. C. Miller & K. P. Snyder, T. A. Pollock, attorney- for plaintiff- in error.

STATE OF KANSAS, } ss:
County of ——, }

I received this summons in error on the 6th day of March, 1896, at 10 o'clock a. m., and served the same on the 11 day of March, 1896, by delivering a true and certified copy of same to A. L. Williams, R. W. Blair, and N. H. Loomis personal-.

R. B. KEPLEY, *Sheriff,*
By A. T. LUCAS, *Deputy.*

Fees.

Service	1.00
Mileage	
Copy	.75
Total	1.75

32 And afterwards, on the 1st day of January, 1898, the same being one of the regular judicial days of the July term, 1897, of the supreme court of the State of Kansas, the said court in session in the supreme court room, in the city of Topeka, there being present the Honorable Frank Doster, chief justice, and the Honorable Wm. A. Johnston and the Honorable Stephen H. Allen, associate justices, and John Martin, Esq., clerk of said court, the following proceedings were had and entered of record, to wit:

33 *Journal Entry of Assignment.*

The following cases were ordered assigned for hearing at the March, 1898, session of this court on the dates as follows:

* * * * * * *

City of Kansas City *vs.* Clark *et al.*, No. 10571, page 13, March 2.

* * * * * * *

33½ And aftereard, on the 1st day of March, 1898, there was filed in the office of the clerk of the supreme court of the State of Kansas a proof of service of plaintiffs in error's brief, which is in words and figures as follows, to wit:

34 Service of this brief hereby acknowledged upon this 24th day of Feb., 1898.

A. L. WILLIAMS &
N. H. LOOMIS,
Att'ys for Def'ts in Error.

In the Supreme Court of the State of Kansas.

THE CITY OF KANSAS CITY, KANSAS; THE BOARD OF Education of the City of Kansas City, Kansas; The Township of Wyandotte, of Wyandotte County, Kansas; School District No. 9, Wyandotte County, Kansas; Benjamin Schnierle, as County Treasurer of Wyandotte County, Kansas; Leonard C. Daniels, as Successor in Office of Charles E. Bruce and as County Clerk of Wyandotte County, Kansas, Plaintiffs in Error,

vs.

S. H. H. CLARK, OLIVER W. MINK, E. ELLERY ANDERSON, J. W. Doane, and F. R. Coudert, as Receivers of the Union Pacific Railway Company, Defendants in Error.

10571.

Brief of Plaintiffs in Error.

T. A. Pollock and Geo. B. Watson, attorneys for plaintiffs in error.

Filed Mar. 1, 1898.

JNO. MARTIN,
Clerk Supreme Court.

35 And also, on the 1st day of March, 1898, there was filed in the office of the clerk of the supreme court of the State of Kansas a stipulation, which, with the endorsements thereon, is in words and figures as follows, to wit:

36 Henry McGrew. Geo. B. Watson. A. E. Watson.

Law office of McGrew, Watson & Watson, N. E. corner 7th and Minnesota Ave.

Telephone west 42.

KANSAS CITY, KANS., *Feb. 28th*, 1898.

Hon. John Martin, clerk supreme court, Topeka, Kansas.

DEAR SIR: I forward you today a copy of the brief of plaintiffs in error in the case of The City of Kansas City *et al. vs.* S. H. H. Clark *et al.*, defendants in error, with an acknowledgement of the service of said brief endorsed thereon.

By an arrangement with Mr. A. L. Williams, one of the attorneys for the defendant- in error, the case is to be continued until the May sitting of said court. If Mr. Williams should not be present, please call the attention of the court to such arrangement.

Yours truly, GEO. B. WATSON.

(Endorsed:) 10571. City of Kansas City *et al. vs.* S. H. H. Clark *et al.* Request to continue until May, 1898. Filed Mar. 1, 1898. Jno. Martin, clerk supreme court.

37 And afterward, on the 2nd day of March, 1898, the same being one of the regular judicial days of the January term, 1898, of the supreme court of the State of Kansas, the said court in session at the supreme court room, in the city of Topeka, there being present the Honorable Frank Doster, chief justice; the Honorable Wm. A. Johnston, and the Honorable Stephen H. Allen, associate justices, and John Martin, Esq., clerk of said court, the following proceedings were had and entered of record, to wit:

38 *Journal Entry of Continuance.*

CITY OF KANSAS CITY ET AL., Pl'ffs in Error,
vs. } 10571.
S. H. H. CLARK, ETC., ET AL., Def'ts in Error.

On motion of defendants in error, it is ordered that the further hearing of this cause be continued to the May, 1898, session of this court and assigned for hearing on May 3rd.

39 And afterward, on the 3rd day of May, 1898, there was filed in the office of the clerk of the supreme court of the State of Kansas an order to submit, which, with the endorsements thereon, is in words and figures as follows, to wit:

40 Office of T. A. Pollock, city attorney, rooms 307, 308, 309, Portsmouth building.

Telephone west 111.

KANSAS CITY, KANSAS, *May 2nd*, 1898.

Hon. John Martin, clerk supreme court, Topeka, Kansas.

DEAR SIR: Submit cases of Kansas City *vs.* S. H. Clark *et al.* and Kansas City *vs.* Hanson *et al.* in supreme court on brief filed on part of plaintiff in error, Kansas City; oral argument waived.

Respectfully, T. A. POLLOCK,
City Attorney.

(Endorsed:) 10571, 10708. Order of plaint. to sub. on br. Filed May 3, 1898. Jno. Martin, clerk supreme court.

41 And also, on the 3rd day of May, 1898, the same being one of the regular judicial days of the January term, A. D. 1898, of the supreme court of the State of Kansas, said court in session at the supreme court room, in the city of Topeka, there being present the Honorable Frank Doster, chief justice, and the Honorable Wm. A. Johnston and the Honorable Stephen H. Allen, associate justices, and John Martin, clerk of said court, the following proceedings were had and entered of record, to wit:

42 *Journal Entry of Submission.*

CITY OF KANSAS CITY, KANSAS, ET AL, Pl'ffs in Error,
vs.
S. H. H. CLARK, Receivers, etc., ET AL., Def'ts in Error. } 10571.

This cause comes on to be heard on the petition in error and the transcript of record of the district court of Wyandotte county; and thereupon, after oral argument by A. L. Williams, for defendants in error, said cause was submitted on briefs of counsel by both parties and taken under advisement by the court.

43 And afterwards, on the 11th day of June, 1898, the same being one of the regular judicial days of the January term, 1898, of the supreme court of the State of Kansas, said court being in session at the supreme court rooms, at the city of Topeka, there being present the Honorable Frank Doster, chief justice, and the Honorable Wm. A. Johnston and the Honorable Stephen H. Allen, associate justices, and John Martin, Esq., clerk of said court, the following proceeding was had and remains of record, to wit:

44 *Journal Entry of Judgment.*

CITY OF KANSAS CITY ET AL., Pl'ffs in Error,
vs.
THE U. P. R'L'Y CO. ET AL., Def'ts in Error. } 10571.

This cause comes on for decision; and thereupon it is ordered and adjudged that the judgment of the court below be reversed, and

that this cause be remanded, with directions to sustain the demurrer to the petition. It is further ordered that the defendants in error pay the costs of this case in this court, taxed at $—; and hereof let execution issue.

45 And also, on the 11th day of June, 1898, there was filed in the office of the clerk of the supreme court of the State of Kansas a syllabus and opinion of the said cupreme court in said cause, which is in words and figures as follows, to wit:

46 THE CITY OF KANSAS CITY ET AL.
vs.
THE UNION PACIFIC RAILWAY COMPANY ET AL. } No. 10571.

Error from Wyandotte county reversed.

Syllabus by the Court, Doster, C. J.

1. One cannot be heard to complain that a statute which discriminates between classes of persons in the imposition of burdens of municipal control and taxation is unconstitutional as being a denial of the equal protection of the law, unless he belongs to one of the classes discriminated against.
2. The statute, section 15, chapter 32, General Statutes 1897, which provides for the extension of city boundaries over certain classes of adjoining lands, is not violative of the fourteenth amendment to the Constitution of the United States because it exempts agricultural lands from its provisions.

47 THE CITY OF KANSAS CITY ET AL.
vs.
THE UNION PACIFIC RAILWAY COMPANY ET AL. } 10571.

Error from Wyandotte county reversed.

The opinion of the court was delivered by DOSTER, C. J.:

Section 1, chapter 74, Laws of 1891; section 15, chapter 32, General Statutes 1897, reads as follows:

"That whenever any territory adjoining or touching the city limits of any city of the first class having a population of 30,000 inhabitants or more shall be subdivided into lots and blocks, or whenever any unplatted tract of land shall lie upon or mainly within any such city, or is so situated as to be bounded on three-fourths of its boundary line by platted territory of or adjacent to such city, or by the boundary line of such city or by both, the same may be added to and made a part of the city by ordinance duly passed, which ordinance shall describe the territory by giving the name of the subdivision or addition as platted, and by giving the metes and bounds of such unplatted tract, or by giving the metes and bounds of each tract and plat so taken in separately, or of the entire tract or tracts so taken in with the section, town, range and county in which the same is located without further proceedings;

but nothing in this act shall be taken or held to apply to any tract or tracts of lands used for agricultural purposes, when the same is not owned by any railroad or other corporation."

By ordinance of March 8th, 1892, the city council of Kansas City, in pursuance to the above statute, extended the city boundaries so as to include certain lands belonging to the defendant in error, The Union Pacific Railway Company. The preamble to this ordinance reads as follows:

48 "Whereas a certain unplatted territory belonging to the Union Pacific Railroad Company lies upon and mainly within the city of Kansas City, Kansas, and is so situated as to be bounded on three-fourths of its boundary line by platted territory of and adjoining to said city, which said railroad land, by virtue of its location, enjoys the benefits of said city without sharing its burdens: Now, therefore."

This preamble shows that the added tracts belonged to one of the classes of lands the annexation of which is authorized by the statute. The defendants in error obtained a perpetual injunction against the collection of city taxes to which the lands in question became subject after their incorporation into the city limits. Error is now prosecuted from the judgment awarding the injunction. The questions for decision are presented to this court, as in the court below, upon the demurrer of the defendants, now plaintiffs in error, to the petition of the plaintiffs, now defendants in error. The contention of the defendants in error is that the act providing for the extension of city boundaries discriminates between classes of real-estate owners, and is therefore violative of that part of the fourteenth amendment to the Constitution of the United States which prohibits the States from depriving persons of property without due process of law or denying to persons within their jurisdiction the equal protection of the law. This contention is based upon the exception forming the last clause of the statute quoted: "But nothing in this act shall be taken or held to apply to any tract or tracts of land used for agricultural purposes when the same is not owned by any railroad or other corporation." So far as this statute discriminates between classes of owners of agricultural lands

49 the defendants in error cannot be heard to complain. Their lands are not agricultural lands; at least, they do not allege them to be such lands, but, on the contrary, allege that parts of them are used for railroad purposes, and that the remaining portions are vacant and unoccupied lands held and possessed for railroad purposes. Owning no agricultural land, the defendants in error are not affected by the discrimination which the statute makes between the different classes of owners of such kind of land, and they cannot, therefore, be heard to complain on that score. "A court will not listen to an objection made to the constitutionality of an act by a party whose rights it does not affect, and who has, therefore, no interest in defeating it." Cooley's Constitutional Limitations, 6 ed., 196.

The statute, however, does exempt some agricultural lands from its operation. Of this the defendants in error complain, and for

the like reason as before. The discrimination in this particular is not in respect of the ownership of the lands, but in respect of their character—the uses to which devoted. It is not claimed in specific terms that the legislature is powerless to authorize the extension of city boundaries over lands platted for city purposes and used for city residences and at the same time exempt agricultural lands having to the city like relations of situation, contiguity, and otherwise. Such claim is comprehended, however, within the general scope of the argument made. We do not assent to it. No case in assertion of such doctrine has been cited to us and none, we believe, can be found. The very fact of land not already surrounded by incorporated portions of the city being used for agricultural purposes is *prima facie* evidence of the rightfulness of its exemption from municipal control. "The fundamental idea of a municipal incorporation is to invest compact or dense populations with the
50 power of local self-government. Indeed the necessity for such corporations springs from the existence of centers or agglomerations of population having, by reason of density and numbers, local or peculiar interests and wants not common to adjoining sparsely settled or agricultural regions." Dillon's Municipal Corporations, 3 ed., sec. 183. Municipal incorporation involves of necessity the idea of corporate limits coterminous with the urban population and exclusive of the adjoining agricultural tracts. City limits are not, of course, always terminable with population. Manufacturing and other industrial institutions like railway yards, round-houses, grain elevators, and the like are often situated beyond the limits of city population. Ordinarily in such cases they are immediately adjoining it. In and around such places many persons are employed at labor both day and night, and the necessity for the inclusion of such places within city boundaries is just as great as though they formed parts of the residence and business portions of the city. To say that the tracts of land upon which these industrial institutions are situated may not be included within city boundaries and subjected to municipal control, because an adjoining tract of land used for farming purposes, but equally as near to the heart of the city, is not likewise brought within the city limits, is a claim to us unheard of before. It is the business of the legislature to enact general rules by which the boundaries of incorporated districts may be fixed in the first instance and by which additions thereto may subsequently be made. Dillon's Municipal Corporations, 3 ed., sec. 185. The special instances in which the general legislative rules may be applied must of necessity be left to the municipal authorities of the city in question. Instances may occur in which both legislature and city council will violate fundamental rules, but the petition of the plaintiffs below, the defendants in error here, does not show any such case.

It is contended that the act in question, though general in
51 its terms, is nevertheless special in point of fact, because at the time of its enactment there was and is yet but one city to which its provisions could apply. This does not make it a special law.

The judgment of the court below was wrong. It is reversed, with directions to sustain the demurrer to the petition.

All the justices concurring.

A true copy.

Attest:

____ ____,
Clerk Supreme Court.

52 And afterward, on the 2nd day of August, 1898, there was filed in the office of the clerk of the supreme court of the State of Kansas a petition for a writ of error, which, with the endorsements thereon, is in the words and figures as follows, to wit:

53 In the Supreme Court of the State of Kansas.

THE CITY OF KANSAS CITY, KANSAS; THE Board of Education of the City of Kansas City, Kansas; The Township of Wyandotte, of Wyandotte County, Kansas; School District No. 9, Wyandotte County, Kansas; Benjamin Schnierle, as County Treasurer of Wyandotte County, Kansas; Leonard C. Daniels, as Successor in Office of Charles E. Bruce and as County Clerk of Wyandotte County, Kansas, Plaintiffs in Error, *vs.* S. H. H. CLARK, OLIVER W. MINK, E. ELLERY Anderson, J. W. Doane, and F. R. Coudert, as Receivers of the Union Pacific Railway Company, Defendants in Error.	Petition for Writ of Error.

Now come S. H. H. Clark, Oliver W. Mink, E. Ellery Anderson, J. W. Doane, and F. R. Coudert as receivers of the Union Pacific Railway Company, defendants in error herein, and say that on or about the 11th day of June, 1898, this court entered judgment herein in favor of the plaintiffs in error and against these defendants in error, in which judgment and the proceedings had prior thereunto in this cause certain errors were committed, to the prejudice of these defendants in error, all of which will more in detail appear from the assignment of errors, which is filed with this petition in error.

Wherefore these defendants in error pray that a writ of error may be allowed in this behalf to the Supreme Court of the United States for the correction of errors so complained of, and that a transcript of the record, proceedings, and papers in this cause, duly authenticated, may be sent to said Supreme Court of the United States.

A. L. WILLIAMS,
N. H. LOOMIS, &
R. W. BLAIR,
Attorneys for S. H. H. Clark et al., Defendants in Error.

54 [Endorsed:] 10571. In the supreme court of the State of Kansas. The City of Kansas City, Kansas, *et al.*, plaintiffs

in error, *vs.* S. H. H. Clark *et al.*, receivers of the Union Pacific Railway Company, defendants in error. Petition for writ of error. Filed Aug. 2, 1898. Jno. Martin, clerk supreme court.

55 And also, on the 2nd day of August, 1898, there was filed in the office of the clerk of the supreme court of the State of Kansas a petition for reversal, which, with the endorsements thereon, is in words and figures as follows, to wit:

56 In the Supreme Court of the United States.

S. H. H. CLARK, OLIVER W. MINK, E. Ellery Anderson, J. W. Doane, and F. R. Coudert, as Receivers of the Union Pacific Railway Company, Plaintiffs in Error,

vs.

THE CITY OF KANSAS CITY, KANSAS; THE Board of Education of the City of Kansas City, Kansas; The Township of Wyandotte, of Wyandotte County, Kansas; School District No. 9, Wyandotte County, Kansas; Benjamin Schnierle, as County Treasurer of Wyandotte County, Kansas; Leonard C. Daniels, as Successor in Office of Charles E. Bruce and as County Clerk of Wyandotte County, Kansas, Defendants in Error.

} Petition for Reversal.

S. H. H. Clark, Oliver W. Mink, E. Ellery Anderson, J. W. Doane, and F. R. Coudert, receivers of the Union Pacific Railway Company, in connection with their petition for a writ of error and their assignment of errors entitled and filed in this cause in the supreme court of the State of Kansas, pray that the judgment rendered against them in the supreme court of the State of Kansas on or about the 11th day of June, 1898, may be reversed, annulled, and altogether held for nothing, and that they may be restored to all things which they have lost by reason of such judgment.

A. L. WILLIAMS,
N. H. LOOMIS, &
R. W. BLAIR,

Attorneys for S. H. H. Clark, Oliver W. Mink, E. Ellery Anderson, J. W. Doane, and F. R. Coudert, Receivers of the Union Pacific Railway Company, Plaintiffs in Error.

57 [Endorsed:] 10571. In the Supreme Court of the United States. S. H. H. Clark *et al.*, receivers of the Union Pacific Railway Company, plaintiffs in error, *vs.* The City of Kansas City, Kansas, *et al.*, defendants in error. Petition for reversal. Filed Aug. 2, 1898. Jno. Martin, clerk supreme court.

58 Be it remembered that on Tuesday, the 2nd day of August, 1898, before the Honorable Frank Doster, chief justice of the

supreme court of the State of Kansas, at his chambers, in the city of Topeka, the following proceeding was had and entered of record as follows, to wit:

59 In the Supreme Court of the State of Kansas.

THE CITY OF KANSAS CITY, KANSAS; THE BOARD of Education of the City of Kansas City, Kansas; The Township of Wyandotte, of Wyandotte County, Kansas; School District No. 9 of Wyandotte County, Kansas; Benjamin Schnierle, as County Treasurer of Wyandotte County, Kansas; Leonard C. Daniels, as Successor in Office of Charles E. Bruce and as County Clerk of Wyandotte County, Kansas, Plaintiffs in Error,

vs.

S. H. H. CLARK, OLIVER W. MINK, E. ELLERY Anderson, J. W. Doane, and F. R. Coudert, as Receivers of the Union Pacific Railway Company, Defendants in Error.

} Journal Entry.

Upon this day come S. H. H. Clark, Oliver W. Mink, E. Ellery Anderson, J. W. Doane, and F. R. Coudert, receivers of the Union Pacific Railway Company, defendants in error in the above-entitled cause, by A. L. Williams, their attorney, and present to the undersigned, chief justice of the supreme court of the State of Kansas, their petition herein praying for the allowance of a writ of error in the above-entitled cause to the Supreme Court of the United States for the correction of certain errors complained of and more fully set forth in the assignment of errors accompanying said petition for a writ of error.

Upon consideration whereof it is hereby ordered that the said petition be, and the same is hereby, granted, and the said writ of error allowed. The said defendants in error thereupon present their supersedeas bond on said writ of error in the sum of ten thousand ($10,000) dollars, with P. I. Bonebrake, of Topeka, Kas., and J. R. Mulvane, of Topeka, Kas., as sureties.

Upon consideration whereof the said bond and the sufficiency of the sureties thereon is hereby approved by me.

Dated this 2d day of August, 1898.

FRANK DOSTER,
Chief Justice of the Supreme Court of the State of Kansas.

(Endorsed:) 10571. In the supreme court of the State of Kansas. The City of Kansas City *et al.*, plaintiffs in error, *vs.* S. H. H. Clark *et al.*, receivers of the Union Pacific Railway Company, defendants in error. Journal entry. Filed Aug. 2, 1898. Jno. Martin, clerk supreme court.

60 And also, on the 2nd day of August, 1898, there was filed in the office of the clerk of the supreme court of the State of

Kansas a writ of error, which, with the allowance thereof endorsed thereon, is in words and figures as follows, to wit:

61 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the supreme court of the State of Kansas, Greeting:

Because in the record and proceedings, as also in the rendition of a judgment of a plea which is in the said supreme court of the State of Kansas, before you or some of you, being the highest court of law or equity of said State in which a decision could be had in a suit between The City of Kansas City, Kansas; The Board of Education of the City of Kansas City, Kansas; The Township of Wyandotte, of Wyandotte county, Kansas; School District No. 9, Wyandotte county, Kansas; Benjamin Schnierle, as county treasurer of Wyandotte county, Kansas; Leonard C. Daniels, as successor in office of Charles E. Bruce and as county clerk of Wyandotte county, Kansas, plaintiffs in error, and S. H. H. Clark, Oliver W. Mink, E. Ellery Anderson, J. W. Doane, and F. R. Coudert, as receivers of the Union Pacific Railway Company, defendants in error, wherein there was drawn in question the validity of a treaty or statute of or an authority exercised under the United States and the decision was against their validity, or wherein there was drawn in question the validity of a statute of or an authority exercised under said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity, or wherein there was drawn in question the construction of a clause of the Constitution or of a treaty or statute of or commission held under the United States and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of said Constitution, treaty, statute, or commission, a manifest error hath happened, to the
62 great damage of the said S. H. H. Clark, Oliver W. Mink, E. Ellery Anderson, J. W. Doane, and F. R. Coudert, as receivers of the Union Pacific Railway Company, as by their complaint appears, we, being willing that error, if any hath happened, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on a day not exceeding thirty days from the 2d day of August, 1898, in the office of the clerk of the said Supreme Court, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the

said Supreme Court, this the 2d day of August, in the year of our Lord one thousand eight hundred and ninety-eight.

{ The Seal of the Circuit Court of the United States, } { District of Kansas, 1862. }

GEO. F. SHARITT,
Clerk of the Circuit Court of the United States
for the District of Kansas.

Allowed by—
FRANK DOSTER,
Chief Justice of the Supreme Court
of the State of Kansas.

63 [Endorsed:] 10571. In the supreme court of the State of Kansas. The City of Kansas City, Kansas, *et al.*, plaintiffs in error, *vs.* S. H. H. Clark *et al.*, receivers of the Union Pacific Railway Company, defendants in error. Writ of error. Filed Aug. 2, 1898. Jno. Martin, clerk supreme court.

64 True and certified copies of the foregoing writ of error were, upon the 4th day of August, 1898, lodged with the clerk of the supreme court of Kansas by said receivers, defendants in error, for each of said plaintiffs in error, and the following endorsements made upon said copies:

65 Upon the first copy the following:

10571. Copy of writ of error lodged with clerk supreme court by defendants in error for plaintiffs in error. City of Kansas City *et al. vs.* Clark *et al.* Filed Aug. 4, 1898. Jno. Martin, clerk sup. court. For City of Kansas City, Kansas, plaintiff in error.

Upon the second copy the following:

10571. Copy of writ of error lodged with clerk supreme court by defendants in error for plaintiffs in error. City of Kansas City *vs.* Clark *et al.* Filed Aug. 4, 1898. Jno. Martin, clerk sup. court. For B'd of Education of the City of Kansas City, plaintiff in error.

Upon the third copy the following:

10571. Copy of writ of error lodged with clerk supreme court by defendants in error for plaintiffs in error. City of Kansas City *et al. vs.* Clark *et al.* Filed Aug. 4, 1898. Jno. Martin, clerk sup. court. For Twp. of Wyandotte, of Wyandotte County, Kansas, plaintiff in error.

Upon the fourth copy the following:

10571. Copy of writ of error lodged with clerk supreme court by defendants in error for plaintiffs in error. City of Kansas City *et al. vs.* Clark *et al.* Filed Aug. 4, 1898. Jno. Martin, clerk sup. court. For School District No. 9 of Wyandotte County, Kansas, plaintiff in error.

Upon the fifth copy the following:

10571. Copy of writ of error lodged with clerk supreme court by defendants in error for plaintiffs in error. City of Kansas City *et al. vs.* Clark *et al.* Filed Aug. 4, 1898. Jno. Martin, clerk sup. court. For Benjamin Schnierle, county treasurer, etc., plaintiff in error.

66 Upon the sixth copy the following:

10571. Copy of writ of error lodged with clerk supreme court by defendants in error for plaintiffs in error. City of Kansas City *et al. vs.* Clark *et al.* Filed Aug. 4, 1898. Jno. Martin, clerk sup. court. For Leonard C. Daniels, as county clerk, etc., plaintiff in error.

67 And also, on the 2nd day of August, 1898, there was filed in the office of the clerk of the supreme court of the State of Kansas an assignment of errors, which, with the endorsements thereon, is in words and figures as follows, to wit:

68 In the Supreme Court of the State of Kansas.

THE CITY OF KANSAS CITY, KANSAS; THE Board of Education of the City of Kansas City, Kansas; The Township of Wyandotte, of Wyandotte County, Kansas; School District No. 9, Wyandotte County, Kansas; Benjamin Schnierle, as County Treasurer of Wyandotte County, Kansas; Leonard C. Daniels, as Successor in Office of Charles E. Bruce and as County Clerk of Wyandotte County, Kansas, Plaintiffs in Error,	Assignment of Errors.
vs.	
S. H. H. CLARK, OLIVER W. MINK, E. Ellery Anderson, J. W. Doane, and F. R. Coudert, as Receivers of the Union Pacific Railway Company, Defendants in Error.	

S. H. H. Clark, Oliver W. Mink, E. Ellery Anderson, J. W. Doane, and F. R. Coudert, receivers of the Union Pacific Railway Company, defendants in error herein, in connection with their petition for a writ of error, make the following assignment of errors, which, they aver, appear in the record in this cause, to wit:

First.

The said supreme court of the State of Kansas erred in reversing the judgment of the lower court.

Second.

The said supreme court of the State of Kansas erred in failing and refusing to affirm the judgment of the lower court.

Third.

The said supreme court of the State of Kansas erred in holding that these defendants in error could not complain of the fact that

chapter 74 of the Session Laws of Kansas for 1891, being an act entitled "An act relating to certain cities of the first class, and the adding thereto certain adjoining territory," was in violation of that part of the fourteenth amendment to the Federal Constitu-
69 tion which provides "that no State shall deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the law."

Fourth.

The said supreme court of the State of Kansas erred in failing and refusing to hold that chapter 74 of the Session Laws of Kansas for 1891, being an act entitled "An act relating to certain cities of the first class, and the adding thereto certain adjoining territory," was in violation of that part of the fourteenth amendment to the Federal Constitution which provides "that no State shall deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the law."

Fifth.

The said supreme court of the State of Kansas erred in refusing to hold that the exception contained in chapter 74 of the Session Laws of Kansas for 1891, being an act entitled "An act relating to certain cities of the first class, and the adding thereto certain adjoining territory," did not bring said act within the inhibition of that part of the 14th amendment to the Federal Constitution which provides "that no State shall deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the law," the exception in said statute herein referred to being as follows:

"But nothing in this act shall be taken or held to apply to any tract or tracts of land used for agricultural purposes, when the same is not owned by any railroad or other corporation."

Sixth.

The said supreme court of the State of Kansas erred in
70 holding that said chapter 74 of the Session Laws of Kansas for 1891, being an act entitled "An act relating to certain cities of the first class, and the adding thereto certain adjoining territory," was and is valid, in so far as these defendants in error are concerned, and binding upon them.

Seventh.

The said supreme court of the State of Kansas erred in holding that the action of the city of Kansas City in taking within its limits the property of the Union Pacific Railway Company, under the provisions of chapter 74 of the Session Laws of Kansas for 1891, being an act entitled "An act relating to certain cities of the first class, and the adding thereto certain adjoining territory," was legal,

and that the tax levies of said city extended against said property were valid.

A. L. WILLIAMS,
N. H. LOOMIS, &
R. W. BLAIR,
Attorneys for S. H. H. Clark et al., Receivers of the Union Pacific Railway Company, Defendants in Error.

71 [Endorsed:] 10571. In the supreme court of the State of Kansas. The City of Kansas City, Kansas, *et al.*, plaintiffs in error, *vs.* S. H. H. Clark *et al.*, receivers of the Union Pacific Railway Company, defendants in error. Assignment of errors. Filed Aug. 2, 1898. Jno. Martin, clerk supreme court.

72 And also, on the 2nd day of August, 1898, there was filed in the office of the clerk of the supreme court of the State of Kansas a supersedeas bond, which, with the approval thereof endorsed thereon, is in words and figures as follows, to wit:

73 Know all men by these presents that we, P. I. Bonebrake and J. R. Mulvane, of Topeka, Shawnee county, Kansas, are held and firmly bound unto the City of Kansas City, Kansas; the Board of Education of the City of Kansas City, Kansas; the Township of Wyandotte, of Wyandotte county, Kansas; School District No. 9, Wyandotte county, Kansas; Benjamin Schnierle, as county treasurer of Wyandotte county, Kansas; Leonard C. Daniels, as successor in office of Charles E. Bruce and as county clerk of Wyandotte county, Kansas, and each and every of them in the full and just sum of ten thousand ($10,000) dollars, to be paid to the said City of Kansas City, Kansas; the Board of Education of the City of Kansas City, Kansas; the Township of Wyandotte, of Wyandotte county, Kansas; School District No. 9, Wyandotte county, Kansas; Benjamin Schnierle, as county treasurer of Wyandotte county, Kansas; Leonard C. Daniels, as successor in office of Charles E. Bruce and as county clerk of Wyandotte county, Kansas, their successors, heirs, executors, administrators, and assigns, and each and every of them; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Whereas, upon or about the 11th day of June, A. D. 1898, in a suit depending in the supreme court of the State of Kansas between The City of Kansas City, Kansas; The Board of Education of the City of Kansas City, Kansas; The Township of Wyandotte, of Wyandotte county, Kansas; School District No. 9, Wyandotte county, Kansas; Benjamin Schnierle, as county treasurer of Wyandotte county, Kansas; Leonard C. Daniels, as successor in office of Charles E. Bruce and as county clerk of Wyandotte county, Kansas, plaintiffs in error, and S. H. H. Clark, Oliver W. Mink, E. Ellery Anderson, J. W. Doane, and F. R. Coudert, as receivers of the Union Pacific Railway Company, defendants in error, judgment was rendered against said defendants in error, and the said defendants in error have obtained a writ of error in the said court

to reverse the judgment in the aforesaid suit, and a citation directed to the said plaintiffs in error, citing and admonishing them to be and appear in the Supreme Court of the United States, at the city of Washington, within thirty days from and after the 2d day of August, 1898:

Now, the condition of the above obligation is such that if the said S. H. H. Clark, Oliver W. Mink, E. Ellery Anderson, J. W. Doane, and F. R. Coudert, receivers of the Union Pacific Railway Company, shall prosecute said writ of error to effect and answer all damages and costs if they fail to make good their plea, then the above obligation to be void; else to remain in full force and virtue.

Sealed with our hands and dated this 2 day of August, 1898.

P. I. BONEBRAKE.
J. R. MULVANE.

Approved by—
FRANK DOSTER,
Chief Justice of the Supreme Court of the State of Kansas.

(Endorsed:) 10571. In the supreme court of the State of Kansas. The City of Kansas City, Kansas, *et al.*, plaintiffs in error, *vs.* S. H. H. Clark *et al.*, receivers of the Union Pacific Railway Company, defendants in error. Supersedeas bond. Filed Aug. 2, 1898. Jno. Martin, clerk supreme court.

74 And afterwards, on the 4th day of August, 1898, there was filed in the office of the clerk of the supreme court of the State of Kansas a citation, which, with the acknowledgment of service endorsed thereon and proof of service attached thereto, is in words and figures as follows, to wit:

75 UNITED STATES OF AMERICA, *ss:*

To the City of Kansas City, Kansas; the Board of Education of the City of Kansas City, Kansas; the Township of Wyandotte, of Wyandotte county, Kansas; School District No. 9, Wyandotte county, Kansas; Benjamin Schnierle, as county treasurer of Wyandotte county, Kansas; Leonard C. Daniels, as successor in office of Charles E. Bruce and as county clerk of Wyandotte county, Kansas, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, at the city of Washington, within thirty days from the date hereof, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Kansas, wherein you are plaintiffs in error and S. H. H. Clark, Oliver W. Mink, E. Ellery Anderson, J. W. Doane, and F. R. Coudert, receivers of the Union Pacific Railway Company, are defendants in error, to show cause, if any there*of*—, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Frank Doster, chief justice of the supreme court of the State of Kansas, this 2d day of August, 1898.

FRANK DOSTER,
Chief Justice of the Supreme Court of the State of Kansas.

Service of the foregoing citation hereby acknowledged upon this 3d day of August, 1898.

GEO. B. WATSON,
T. A. POLLOCK,
Attorneys for The City of Kansas City, Kans., et al., the Above-named Plaintiffs in Error in State Supreme Court.

76 [Endorsed:] 10571. In the supreme court of the State of Kansas. The City of Kansas City, Kansas, *et al.*, plaintiffs in error, *vs.* S. H. H. Clark *et al.*, receivers of the Union Pacific Railway Company, defendants in error. Citation. Filed Aug. 4, 1898. Jno. Martin, clerk supreme court.

77 In the Supreme Court of the State of Kansas.

THE CITY OF KANSAS CITY, KANSAS; THE BOARD OF EDUCATION of the City of Kansas City, Kansas; The Township of Wyandotte, of Wyandotte County, Kansas; School District No. 9, Wyandotte County, Kansas; Benjamin Schnierle, as County Treasurer of Wyandotte County, Kansas; Leonard C. Daniels, as Successor in Office of Charles E. Bruce and as County Clerk of Wyandotte County, Kansas, Plaintiffs in Error,

vs.

S. H. H. CLARK, OLIVER W. MINK, E. ELLERY ANDERSON, J. W. Doane, and F. R. Coudert, as Receivers of the Union Pacific Railway Company, Defendants in Error.

I, John Martin, clerk of the supreme court of the State of Kansas, do hereby certify that the above and foregoing is a full, correct, true, and complete transcript of pleadings and papers filed and of all proceedings had in the above-entitled cause as the same remains now on file and of record in my office.

Witness my hand and the seal of the supreme court of the State of Kansas affixed hereto, at my office, in the city of Topeka, this 22d day of August, 1898.

Seal Supreme Court, State of Kansas.

JNO. MARTIN,
Clerk Supreme Court.

Endorsed on cover: Case No. 16,987. Kansas supreme court. Term No., 402. S. H. H. Clark, Oliver W. Mink, E. Ellery Anderson, J. W. Doane, and F. R Coudert, receivers of the Union Pacific Railway Company, plaintiffs in error, *vs.* The City of Kansas City, Kansas, *et al.* Filed September 13th, 1898.